

Part 3 Requirements

31A-37-301 Incorporation -- Organization.

- (1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
 - (a) divided into shares; and
 - (b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.
- (2) A pure captive insurance company or a sponsored captive insurance company formed as a limited liability company shall be organized as a members' interest insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
 - (a) divided into interests; and
 - (b) held by the members of the pure captive insurance company or sponsored captive insurance company.
- (3) An association captive insurance company or an industrial insured captive insurance company may be:
 - (a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:
 - (i) divided into shares; and
 - (ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;
 - (b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or
 - (c) organized as a reciprocal.
- (4) A captive insurance company formed as a corporation may not have fewer than three incorporators of whom one shall be a resident of this state.
- (5) A captive insurance company formed as a limited liability company may not have fewer than three organizers of whom one shall be a resident of this state.
- (6)
 - (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.
 - (b) In considering a request for a certificate under Subsection (6)(a), the commissioner shall consider:
 - (i) the character, reputation, financial standing, and purposes of the incorporators;
 - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
 - (iii) any information in:
 - (A) the application for a certificate of authority; or
 - (B) the department's files; and
 - (iv) other aspects that the commissioner considers advisable.
- (7)

- (a) Before a captive insurance company formed as a limited liability company files the limited liability company's certificate of organization with the Division of Corporations and Commercial Code, the limited liability company shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed limited liability company will promote the general good of the state.
 - (b) In considering a request for a certificate under Subsection (7)(a), the commissioner shall consider:
 - (i) the character, reputation, financial standing, and purposes of the organizers;
 - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the managers;
 - (iii) any information in:
 - (A) the application for a certificate of authority; or
 - (B) the department's files; and
 - (iv) other aspects that the commissioner considers advisable.
- (8)
- (a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:
 - (i) the captive insurance company's articles of incorporation;
 - (ii) the certificate issued pursuant to Subsection (6); and
 - (iii) the fees required by the Division of Corporations and Commercial Code.
 - (b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (6) for a captive insurance company that complies with this section.
- (9)
- (a) A captive insurance company formed as a limited liability company shall file with the Division of Corporations and Commercial Code:
 - (i) the captive insurance company's certificate of organization;
 - (ii) the certificate issued pursuant to Subsection (7); and
 - (iii) the fees required by the Division of Corporations and Commercial Code.
 - (b) The Division of Corporations and Commercial Code shall file both the certificate of organization and the certificate described in Subsection (7) for a captive insurance company that complies with this section.
- (10)
- (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.
 - (b) In considering a request for a certificate under Subsection (10)(a), the commissioner shall consider:
 - (i) the character, reputation, financial standing, and purposes of the incorporators;
 - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
 - (iii) any information in:
 - (A) the application for a certificate of authority; or
 - (B) the department's files; and
 - (iv) other aspects that the commissioner considers advisable.
- (11)

- (a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:
 - (i) the home state of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and
 - (ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.
- (b) After the commissioner issues a certificate under Subsection (11)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.
- (12) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.
- (13) At least one of the managers of a limited liability company shall be a resident of this state.
- (14) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.
- (15)
 - (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.
 - (b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.
 - (c) Except as provided in Subsection (15)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.
 - (d) Notwithstanding Subsection (15)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.
 - (e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.
- (16)
 - (a) A captive insurance company formed as a limited liability company under this chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405, as well as the applicable provisions in this chapter.
 - (b) If a conflict exists between a provision of the limited liability company law and a provision of this chapter, this chapter controls.
 - (c) The provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.
 - (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.
 - (e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.
- (17)

- (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.
 - (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.
 - (c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.
 - (d) In addition to the provisions of this Subsection (17), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.
- (18)
- (a) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may not authorize a quorum of a board of directors to consist of fewer than one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.
 - (b) The certificate of organization of a captive insurance company formed as a limited liability company may not authorize a quorum of a board of managers to consist of fewer than one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

Amended by Chapter 348, 2016 General Session

31A-37-302 Investment requirements.

- (1)
- (a) Except as provided in Subsection (1)(b), an association captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in this title.
 - (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating under Section 31A-37-106 for:
 - (i) an association captive insurance company;
 - (ii) a sponsored captive insurance company; or
 - (iii) an industrial insured group.
- (2)
- (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.
 - (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:
 - (i) a pure captive insurance company; or
 - (ii) an industrial insured captive insurance company.
- (3)
- (a)
 - (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:
 - (A) the parent company of the captive insurance company; or
 - (B) an affiliate of the captive insurance company.
 - (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:
 - (A) the parent company of the pure captive insurance company; or

- (B) an affiliate of the pure captive insurance company.
- (b) A loan under Subsection (3)(a):
 - (i) may be made only on the prior written approval of the commissioner; and
 - (ii) shall be evidenced by a note in a form approved by the commissioner.
- (c) A pure captive insurance company may not make a loan from the paid-in capital required under Subsection 31A-37-204(1).

Amended by Chapter 244, 2015 General Session

31A-37-303 Reinsurance.

- (1) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.
- (2)
 - (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or if the captive insurance company complies with other requirements as the commissioner may establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b) Unless the reinsurer is in compliance with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or a rule adopted under Subsection (2)(a), a captive insurance company may not take credit for:
 - (i) reserves on risks ceded to a reinsurer; or
 - (ii) portions of risks ceded to a reinsurer.

Amended by Chapter 138, 2016 General Session

31A-37-304 Rating organization.

A captive insurance company is not required to join a rating organization.

Enacted by Chapter 251, 2003 General Session

31A-37-305 Contributions to guaranty or insolvency fund prohibited.

- (1) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to any of the following in this state:
 - (a) a plan;
 - (b) a pool;
 - (c) an association;
 - (d) a guaranty fund; or
 - (e) an insolvency fund.
- (2) A captive insurance company, the insured of a captive insurance company, the parent of a captive insurance company, an affiliate of a captive insurance company, a member organization of an association captive insurance company, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the captive insurance company, may not receive a benefit from:
 - (a) a plan;
 - (b) a pool;
 - (c) an association;

- (d) a guaranty fund for claims arising out of the operations of the captive insurance company; or
- (e) an insolvency fund for claims arising out of the operations of the captive insurance company.

Enacted by Chapter 251, 2003 General Session

31A-37-306 Conversion or merger.

- (1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:
 - (a) converted to a reciprocal insurer in accordance with a plan and this section; or
 - (b) merged with and into a reciprocal insurer in accordance with a plan and this section.
- (2) An association captive insurance company or industrial group formed as a limited liability company may be:
 - (a) converted to a reciprocal insurer in accordance with a plan and this section; or
 - (b) merged with and into a reciprocal insurer in accordance with a plan and this section.
- (3) A plan for a conversion or merger under this section:
 - (a) shall be fair and equitable to:
 - (i) the shareholders, in the case of a stock insurer;
 - (ii) the policyholders, in the case of a mutual insurer; and
 - (iii) the members, in the case of a limited liability company insurer; and
 - (b) shall provide for the purchase of:
 - (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or
 - (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder.
- (4) In the case of a conversion authorized under Subsection (1) or (2):
 - (a) the conversion shall be accomplished under a reasonable plan and procedure that are approved by the commissioner;
 - (b) the commissioner may not approve the plan of conversion under this section unless the plan:
 - (i) satisfies Subsections (3) and (7);
 - (ii) provides for the conversion of existing stockholder, policyholder, or member interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder, policyholder, or member interests in the stock or mutual insurer or limited liability company; and
 - (iii) is approved:
 - (A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or
 - (C) in the case of a limited liability company insurer, by a majority of the voting managers represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under Section 31A-37-301;

- (d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;
- (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and
- (f) upon the effectiveness of the conversion:
 - (i) the corporate existence of the converting insurer shall cease; and
 - (ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.
- (5) A merger authorized under Subsection (1) or (2) shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:
 - (a) the plan or merger shall satisfy Subsection (3);
 - (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;
 - (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;
 - (d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;
 - (e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under Section 31A-37-301;
 - (f) notwithstanding Section 31A-37-204, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and
 - (g) an alien insurer may be a party to a merger authorized under Subsection (1) or (2) if:
 - (i) the requirements for the merger between a domestic and a foreign insurer under Chapter 16, Insurance Holding Companies, are applied to the merger; and
 - (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.
- (6) If the commissioner approves the articles of merger under this section:
 - (a) the commissioner shall endorse the commissioner's approval on the articles; and
 - (b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.
- (7)
 - (a) Except as provided in Subsection (7)(b), a conversion authorized under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.
 - (b) Notwithstanding Subsection (7)(a), the commissioner may waive or modify the requirements for the hearing.
 - (c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection (7)(a), the commissioner may cancel the hearing.

Amended by Chapter 244, 2015 General Session

